UNITED
NATIONS

EP

Governing Council
of the United Nations
Environment Programme

Distr.
GENERAL

UNEP/GCSS.V/5
8 April 1998

ORIGINAL: ENGLISH

Fifth special session
Nairobi, 20-22 May 1998
Item 6 of the provisional agenda*

PROGRESS IN THE INTERGOVERNMENTAL NEGOTIATIONS ON AN INTERNATIONAL LEGALLY-BINDING INSTRUMENT FOR THE APPLICATION OF THE PRIOR INFORMED CONSENT (PIC) PROCEDURE FOR CERTAIN HAZARDOUS CHEMICALS AND PESTICIDES IN INTERNATIONAL TRADE

Report of the Executive Director

1. In 1989, the Governing Council of UNEP, by its decision 15/30, and the Conference of the Food and Agriculture Organization of the United Nations (FAO), by its resolution 6/89, incorporated the Prior Informed Consent (PIC) procedure for pesticides and other chemicals that are banned or severely restricted into the London Guidelines on the Exchange of Information on Chemicals in International Trade and the International Code of Conduct on the Distribution and Use of Pesticides respectively. In accordance with decision 15/30 and resolution 6/89, UNEP and FAO jointly execute the voluntary PIC procedure.

2. In 1992, the United Nations Conference on Environment and Development (UNCED) in chapter 19 of Agenda 21, made recommendations for the conclusion of a legally binding instrument on Prior Informed Consent. Paragraph 19.39 (d) of Agenda 21 states that Governments and relevant international organizations with the cooperation of industry "should implement the PIC procedure as soon as possible and, in the light of experience gained, invite relevant international organizations such as UNEP, GATT, FAO, WHO and others in their respective area of competence to consider working expeditiously towards the conclusion of legally binding instruments".

3. The International Conference on Chemical Safety (ICCS), which met in Stockholm in April 1994, as well as the Commission on Sustainable Development at its second session, held in New York in May 1994, recommended that UNEP,

---

* UNEP/GCSS.V/1.

For reasons of economy, this document is printed in a limited number. Delegates are kindly requested to bring their copies to meetings and not to request additional copies.

together with FAO and in close cooperation with other international organizations, continue to evaluate and address problems with the implementation of the voluntary PIC procedure and to develop effective legally binding instruments concerning it. 1/

4. At its hundred and seventh session, in November 1994, the FAO Council discussed the development of a legally binding instrument on the operation of the PIC procedure. The Council considered the actions required by FAO, in cooperation with UNEP, to conclude a legally binding instrument. The Council agreed that the FAO Secretariat should proceed with the preparation of a draft legally binding instrument on the operation of the PIC procedure as part of the joint FAO/UNEP programme on prior informed consent and in cooperation with other international and non-governmental organizations concerned. The Council discussed the time-frame required to develop a legally binding instrument. Many members considered that a draft instrument should be ready for adoption in 1997. The Council agreed that FAO should seek resources, jointly with UNEP, to finance the process for the preparation and conclusion of the legally binding instrument.

5. The Council was informed that progress on the instrument would be dependent on the availability of such resources. In the development of the instrument, close cooperation should be maintained with the Commission on Sustainable Development. 2/

6. To discuss the development of a legally binding instrument, UNEP, together with FAO, convened an informal consultative meeting of government-designated experts in December 1994. The meeting took note of UNEP's earlier work to prepare elements that might be included in a legally binding instrument. It identified several major issues that would need to be addressed during negotiations. Having noted the above-mentioned agreement of the FAO Council on the development of such an instrument, the meeting recommended that the Executive Director of UNEP seek a mandate to start negotiations for the development of a PIC convention during the eighteenth regular session of the Governing Council, in May 1995, with a view to its conclusion, possibly in 1997.

7. At its eighteenth session, the Governing Council discussed the progress made and action required towards the development of a legally binding instrument. In its decision 18/12, it authorized the Executive Director to prepare for and convene, together with FAO, an intergovernmental negotiating committee (INC/PIC), with a mandate to prepare an international legally binding instrument for the application of the PIC procedure for certain hazardous chemicals and pesticides in international trade.

8. In line with the guidance provided by their respective governing bodies, UNEP and FAO, at the invitation of the government of Belgium, convened the first session of the INC/PIC in Brussels, March 1996. More than

---

1/ See E/1994/33-E/CN.17/1994/20, chap.I, para. 169.

2/ See Report of the Council of FAO, Hundred and Seventh Session, Rome, 15-24 November 1994 (CL 107/REP), paras. 48-50.

181 delegates from 81 Governments, one regional economic integration organization, five intergovernmental organizations and seven non-governmental organizations attended the first negotiating session.

9. The second session of the INC was convened from 16 to 20 September 1996 at UNEP headquarters in Nairobi. It was attended by 223 delegates from 87 countries, one regional economic integration organization, five United Nations organizations, and 14 non-governmental organizations. One substantial issue discussed at the second INC was the scope of the Convention, i.e. whether it should be:

(a) A broad framework with the possibility of adding protocols later on persistent organic pollutants (POPs), possibly labelling and classification, and other issues related to chemicals management; or

(b) A more restricted convention limited to PIC.

10. At its hundred and eleventh session, in October 1996, the FAO Council discussed the progress of the PIC negotiations. The Council expressed its satisfaction with the progress of the PIC negotiations and the cooperation between UNEP and FAO in the provision of the secretariat to the Intergovernmental Negotiating Committee. The Council discussed the scope of the mandate for the negotiations. Some members expressed support for a broader framework convention on the management of chemicals. Others suggested that the relevant provisions of the instrument be formulated in a way that could accommodate possible future developments. Yet others preferred to limit the INC/PIC negotiations to the PIC procedure only and wished to have a separate negotiation on persistent organic pollutants (POPs). As there was no consensus on the issue, the Council concluded that the existing mandate of the INC would continue. It noted that further discussions would take place at the nineteenth session of the UNEP Governing Council and that the subject of an integrated mechanism on chemicals management would also be discussed by the International Forum on Chemical Safety at its session in February 1997. Some members suggested that the Export Notification Scheme be included in the instrument. 3/

11. The FAO Council, in particular, indicated that the INC should continue focusing its attention on the elaboration of practical and operational procedures to implement the PIC procedure; recognized that the secretariat arrangements for the instrument would be decided upon by the INC and ultimately by the Diplomatic Conference convened to adopt the instrument. It, however, supported participation of FAO in the Secretariat, as far as this would be related to pesticides; recognized the lead role of FAO in technical work in relation to pesticide management and recommended that this role be strengthened; supported the participation of FAO in future discussions and negotiations on POPs and other issues related to pesticide management, stating that any Secretariat functions in such negotiations

---

3/ See Report of the Council of FAO, Hundred and Eleventh Session, Rome, 1-10 October 1996 (CL 111/REP), paras. 22-23.

should be approved by the governing bodies of FAO; and recognized the need for technical assistance in relation to pesticide management in developing countries. 4/

12. At its nineteenth session, in January 1997, the UNEP Governing Council, in its decision 19/13 A, took note with appreciation of the progress made by the INC at its first and second sessions and:

(a) Confirmed the existing mandate of the Intergovernmental Negotiating Committee as given by the Governing Council in paragraph 1 of its decision 18/12;

(b) Invited the INC to continue its work on the international legally binding instrument for the application of the prior informed consent procedure for certain hazardous chemicals and pesticides in international trade, with an aim of concluding negotiations in 1997;

(c) Recognized that additional elements relating to the prior informed consent procedure are under consideration in the INC;

(d) Requested the Executive Director to convene, in 1997, together with the Director-General of FAO, a diplomatic conference for the purpose of adopting and signing an international legally binding instrument for the application of the PIC procedure for certain hazardous chemicals in international trade;

(e) Called upon Governments that are in a position to do so to provide the necessary financial and technical resources to enable the full and effective functioning of the INC, in particular the full and effective participation of developing countries, especially the least developed countries, and of countries with economies in transition that may be interested.

13. The third session of the INC was convened in Geneva from 26 to 30 May 1997 and was hosted by the Swiss Government. It was attended by 231 delegates from 102 Governments, one regional economic integration organization, six United Nations organizations, one intergovernmental organization, and 10 non-governmental organizations. Extensive debate took place on an article on acutely hazardous pesticide formulations that pose particular handling problems in developing countries. A delegation proposed the widening of its scope by incorporating chemicals causing severe health and environmental effects. Another issue that provoked extensive discussion was the number of notifications of control actions on bans and severe restrictions required to start the process of including a chemical in the PIC procedure.

14. The fourth session of the INC was convened at FAO headquarters in Rome from 20 to 24 October 1997, with financial support from the Governments of the United States of America and Norway. It was attended by 247 delegates from 90 countries, one regional economic integration organization, three United Nations organizations and nine non-governmental organizations. The Committee made good progress and now expected to conclude the negotiations in

---

4/ Ibid., para 24.

one further session. The Technical Working Group that had been established at the second session concluded its work and the texts were now to be further elaborated in plenary and by the Legal Drafting Group, which had also been established at the second session.

15. In addition, the INC, recognizing that the negotiations for a PIC Convention were scheduled to be concluded in the first quarter of 1998, requested the Executive Director of UNEP and the Director-General of FAO, to submit a recommendation to their governing bodies, requesting that they:

(a) Consider mandating the involvement of UNEP and FAO in the operation of an Interim Secretariat and the Secretariat to the Convention as set out in the draft Convention text being considered for adoption by the Diplomatic Conference;

(b) Agree to accept any modifications in the voluntary PIC procedure decided upon by the Diplomatic Conference. 5/

16. The FAO Conference at its twenty-ninth session, held in Rome from 7 to 18 November 1997, welcomed the progress made by the Intergovernmental Negotiating Committee. The Conference authorized the participation of the FAO Secretariat in an Interim Secretariat and in a Secretariat to the Convention if so desired during the negotiations and adopted by the Diplomatic Conference, provided that such arrangements were satisfactory to the Director-General and that costs additional to the implementation of the present voluntary procedure be met through extra-budgetary resources. The Conference also agreed to accept changes in the voluntary PIC procedure, if so decided by the Diplomatic Conference, provided that costs additional to the implementation of the present voluntary procedure be met through extra-budgetary resources. 6/

17. The fifth session of the INC was convened in Brussels from 9 to 14 March 1998 with sponsorship from the European Commission. It was attended by 255 delegates from 95 countries, one regional economic integration organization, six United Nations organizations and 10 non-governmental organizations. After a week of hard and difficult negotiations, the Committee agreed on the draft PIC Convention 7/ and a draft resolution on interim arrangements. 8/

Issues to be considered by the Governing Council

18. The present voluntary PIC procedure will be superseded by the legally binding procedure in the future PIC Convention. There will be substantial differences between the procedures, the present procedure being less subject to government scrutiny. Furthermore, the legally binding procedure will only

---

5/ See UNEP/FAO/PIC/INC.4/7, para. 47.

6/ The relevant excerpt from the report of the FAO Conference at its twenty-ninth session is annexed to the present report.

7/ UNEP/FAO/PIC/INC.5/3, appendix I.

8/ Ibid., appendix III.

start when the PIC Convention comes into force and then only for the countries that are a party to the Convention. At present some 150 countries participate in the voluntary procedure; it is unlikely that the legally binding procedure will initially have the same geographical coverage. The Diplomatic Conference will therefore have to make recommendations on the continuation and nature of the voluntary procedure between the adoption of the Convention and its entry into force. Consideration will also have to be given to the transition of the voluntary procedure into the legally binding procedure when the Convention comes into force, in particular with relation to those chemicals included in the voluntary procedure and the relation to non-Parties that participate in the voluntary procedure.

19. The agreed version of the draft PIC Convention contains in its Article 19 the following provision regarding the Secretariat:

> "3. The secretariat functions for this Convention shall be performed jointly by the Executive Director of UNEP and the Director-General of FAO, subject to such arrangements as shall be agreed between them and approved by the Conference of the Parties."

20. Between the adoption of the Convention and its entry into force, interim secretariat arrangements, including its funding, will have to be provided for. Some donors have already identified funds to support the functioning of such an Interim Secretariat. The draft resolution on interim arrangements requests the Executive Director of UNEP and the Director-General of FAO to continue to provide the secretariat in the interim period.

21. The Convention will be adopted by a Diplomatic Conference, which is scheduled to be held in Rotterdam, the Netherlands, in September 1998. When adopting the PIC Convention, the Diplomatic Conference may also wish to adopt the draft resolution on interim arrangements, which covers both the interim and transitional procedure and the Interim Secretariat.

Suggested action by the Governing Council

22. The Governing Council may wish to:

(a) Authorize the participation of the UNEP secretariat in an Interim Secretariat and in a Secretariat to the Convention if so decided by the Diplomatic Conference, provided that such arrangements are satisfactory to the Executive Director and that costs additional to the implementation of the present voluntary procedure be met through extra-budgetary resources;

(b) Agree to accept changes in the voluntary PIC procedure, if so decided by the Diplomatic Conference, provided that costs additional to the implementation of the present voluntary procedure be met through extra-budgetary resources.

Annex

EXCERPT FROM THE REPORT OF THE TWENTY-NINTH SESSION OF THE FAO CONFERENCE

Negotiation of a legally binding instrument
on Prior Informed Consent (PIC) *

64. The Conference welcomed the progress made by the Intergovernmental Negotiating Committee (INC). It noted that one more INC meeting was scheduled prior to the Diplomatic Conference at which the finalized Convention on Prior Informed Consent (PIC) would be adopted.

65. The Conference expressed its appreciation for the excellent cooperation between the United Nations Environment Programme (UNEP) and FAO in the implementation of the voluntary procedure, and supported the continuation of the present Secretariat arrangement.

66. The Conference recognized that the functions of the Interim Secretariat and the Convention Secretariat would require additional financial resources. It noted that the financial mechanism for the Convention and the financial arrangements for the Interim Secretariat would be discussed at the next INC. It also noted that the resources required for the implementation of a Convention would normally be provided by the Parties to the Convention. It agreed, however, that resources presently allocated under the Regular Programme for the present voluntary procedure would remain available for the execution of the Secretariat functions.

67. The Conference took note of the offer by Switzerland to provide host country facilities to a possible future UNEP part of the joint Secretariat. The Conference drew attention to the fact that decisions on this matter would need to be made by the Diplomatic Conference.

68. The Conference stressed the necessity of providing appropriate technical and financial assistance to developing countries, to enable them to implement the obligations under the Convention, and to enhance their capacity to manage pesticides.

69. The Conference then:

(a) Authorized the participation of the FAO Secretariat in an Interim Secretariat and in a Secretariat to the Convention if so desired during the negotiations and adopted by the Diplomatic Conference, provided that such arrangements were satisfactory to the Director-General and that costs additional to the implementation of the present voluntary procedure be met through extra-budgetary resources.

(b) Agreed to accept changes in the voluntary PIC procedure, if so decided by the Diplomatic Conference, provided that costs additional to the implementation of the present voluntary procedure be met through extra-budgetary resources.

---

* C97/6; C97/6-Sup.1; C 97/6-Sup.2; C97/LIM/26; C97/I/PV/5; C97/I/PV/3; C97/I/PV/6; C97/PV/15.